

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION**

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. ) 2:13-cr-00033-JRS-CMM-1  
Defendant )

CHRIS A. LOWERY, )  
Defendant )

**REPORT AND RECOMMENDATION**

On December 12, 2022, the Court held an initial and final hearing on the Petition for Warrant for Offender Under Supervision filed on December 2, 2022. Chris A. Lowery (“Defendant”) appeared with CJA counsel, Lupita Thompson. The Government appeared by Samantha Spiro on behalf of Kelsey Massa, Assistant United States Attorney. U. S. Probation appeared by Officer Jennifer Considine.

The parties advised the Court at the outset of the detention hearing that an agreement was reached by which the defendant would admit Violation #1 in the petition Docket No. [64] and Violation #2 as amended by U.S. Probation on the record.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. §3583:

1. The Court advised Defendant of his rights and provided him with a copy of the petition. Defendant waived his right to a preliminary hearing. The Court found probable cause to proceed on the Petition. The defendant was advised that this matter had been referred by the District Judge and that the District Judge has final authority whether to accept, reject, or modify the recommendation.

2. After being placed under oath, Defendant admitted Violation No. 1. Docket No. [64] and Violation No. 2 as amended on the record.
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

<b><u>Violation Number</u></b>	<b><u>Nature of Noncompliance</u></b>
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1. "You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner."

On November 28, 2022, Mr. Lowery submitted a urine drug test that returned positive for amphetamines and cannabinoids.

Previously, Mr. Lowery tested positive for amphetamines on October 8, 2021, January 21, and 27, 2022, and February 10, and 14, 2022. Also, Mr. Lowery tested positive for cannabinoids and amphetamines on July 12, 2022.

2. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.

"On December 9, 2022, Mr. Lowery reported to the probation office to self-surrender to the Marshals service. During the process of his arrest, Mr. Lowery was found in possession of a device used to obstruct or tamper with a drug screen. "

4. The parties stipulated that:
  - (a) The highest grade of violation is a Grade **B** violation.
  - (b) Defendant's criminal history category is **IV**.
  - (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is **12 to 18** months imprisonment.
5. The Magistrate Judge, having considered the factors in 18 U.S.C. §3553(a),

and as more fully set forth on the record, finds that:

- (a) The Defendant violated the supervised release conditions as alleged in Violation #1 and #2;
- (b) The Magistrate Judge recommends that the defendant be sentenced to incarceration for a period of 14 months after which supervised release shall resume for a period of 36 months;
- (c) The basis for the recommendation follows:

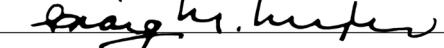
The defendant has struggled while under supervised. He already has sentenced to additional incarceration because of his failure to abide by the terms of supervised release. Yet, there are no discernible changes primarily because it is evident the defendant has a serious addiction problem. Even in-patient treatment has failed to provide relief from his condition.

Unlike many defendants in these circumstances, Mr. Lowery will have the benefit of supervision upon release from prison pursuant to the agreement. Continued supervision and support from U.S. Probation may be his best hope to recover from addiction and resume a productive life. The proposed sentence is within the guidelines.
- (d) That the agreement of the parties is an appropriate resolution of this matter and the agreement is commended to the favorable consideration of the District Judge with the Magistrate Judge's recommendation for sentencing.
- (e) The Magistrate Judge further recommends that the defendant remain on supervised release for 36 months after release.
- (f) The Magistrate Judge further recommends placement at Elkton FCI, Lisbon, Ohio as well as mental health and addiction counseling and treatment

Defendant shall remain in custody pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have waived their 14-day objection period for the consideration of the District Judge.

Dated: December 12, 2022



CRAIG M. McKEE, Magistrate Judge  
United States District Court  
Southern District of Indiana

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